IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.1171 OF 2006

Smt.Sumitra Vithal Prabhu .. ..Petitioner

Versus

Smt. Sushila Nagindranath Shah & ors. ..Respondents

Mr.N.V.Gangal for petitioner

Mr.R.S.Datar for respnodent no.1

CORAM : S.C. DHARMADHIKARI, J.

DATE : 24TH FEBRUARY, 2006

P.C.:

MENTIINED NOT ON BOARD

1. Heard Mr.Gangal appearing for the petitioner and Mr.Datar appearing for the original plaintiff decree holders.

2. The present petitioner failed in a suit for decree of possession filed by 1st respondent. The grounds for seeking possession, inter alia, included those specified under section 13(1)(g) of the Bombay Rent Act, 1947. That suit has been decreed and proceedings to challenge the same right upto this Court have not succeeded.

3. Now, the present petitioner orig. defendant has filed a suit to challenge that decree has been vitiated by fraud. The submission of the petitioner is that the landlord had two premises available to him for residence in the city and therefore need for the premises in question cannot be said to be reasonable and bonafide. The trial court has dismissed the petitioner's suit mainly on the ground that the petitioner-plaintiff could not substantiate the plea of fraud. That apart, it seeks to reopen matters concluded by a decree passed in favour of the respondent-landlord. The matter is carried in appeal by the petitioner and the appeal is pending. In the appeal an application for stay was made, which is rejected, and challenging that order the present petition under Article 227 of the Constitution of India is filed.

4. After having perused the order under challenge with the assistance of Shri Gangal and Mr. Datar, I am unable to hold that, prima facie, conclusion of the lower appellate court is vitiated by any error apparent or is perverse so as to call for interference in writ jurisdiction.

5. The judgments relied upon by Shri Gangal, reported in (1996) 8 SCC 377 and 2002(2) Bom.C.R. 537 cannot be of any assistance at this stage. It will be open for him to rely upon the principle set out therein at stage of final arguments before the lower appellate court. Further, the lower appellate court being satisfied that the judgment of the trial court needs to be set aside, it can always take recourse to its inherent powers and also to Section 144 of CPC. No prejudice is caused to the petitioner herein. Petition stands dismissed.

(S.C.Dharmadhikari,J.)